

**Brookline Board of Appeals
February 4, 2016, 7:00 PM
Public Hearing**

**333 Washington Street
6th Floor Selectmen's Hearing Room**

Board Members Present: Jesse Geller (Chairman), Jonathan Book, Mark Zuroff
Staff Present: Jay Rosa (Planning Department)

14 Harvard Place

Proposal: Change use of residential unit to include in-home tutoring

Zoning District: M-1.0 (Apartment House)

Precinct: 7

Board Decision: Relief request **granted**, subject to conditions

21 Crowninshield Road

Proposal: Application for a Comprehensive Permit to construct eight (8) residential units distributed between two four-story buildings with a total of 16 parking spaces

Zoning District: S-7 (Single-Family)

Precinct: 8

Board Decision: Continuance request granted to **February 23, 2016**

Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.

Decisions shall be posted on the Town of Brookline website (www.brooklinema.gov). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.

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Staff Present – Jay Rosa (Planning Dept.)

7:00PM

14 Harvard Place – Change use of a residential unit to include in-home tutoring

Board Chairman Geller opened the hearing and called case #2015-0068. Mr. Geller reviewed standard hearing procedure.

Property owner Kay Lin waived the reading of public hearing notice for the record and stated that she owns and operates the Lin Learning Center located at 32 Harvard Street. Ms. Lin stated that she has a lease agreement with the Korean Church of Boston to utilize a portion of their facilities to operate an after-school learning program for local students ranging in age from 6-12 years old. Ms. Lin stated that enrollment is small but she hopes to expand her business in the future. Ms. Lin confirmed that her lease agreement with the Church only runs through the academic year and she is unable to utilize this space during summer months. For this reason, Ms. Lin is requesting to utilize the ground floor of her home at 14 Harvard Place to provide in-home tutoring for the months of June and July. Ms. Lin stated that this request to permit an in-home office use will allow her to continue programming through the summer and test her summer curriculum in a manner that does not require significant cost to lease a commercial property.

Ms. Lin also stated that she has completed a significant amount of property renovation and expects to gain her certificate of occupancy in the near future.

Board Member Book questioned if Ms. Lin intends to utilize her private home for the tutoring use only for this temporary summer period. Ms. Lin stated that she hopes to expand her enrollment at the church and/or in a future commercial space and only intends to use her home for tutoring purposes for a limited period of time.

Mr. Book requested additional detail regarding enrollment, staffing, and transportation. Ms. Lin stated that 5 pupils are involved in the program and two other adults assist with tutoring. Ms. Lin also stated that Learning Center staff members pick up pupils after school (Pierce and Lawrence schools) but parents do pick up their children following the program (approximately 6:00PM).

Board Chairman Geller questioned if the Petitioner discussed this in-home tutoring proposal with abutting residents prior to this hearing. Ms. Lin stated that she did not contact abutting residents directly regarding the in-home tutoring but she has discussed ongoing renovation work with neighbors.

Board Chairman Geller called for public comment in favor of the Petitioner's proposal.

Wendy Friedman of 322 Walnut Street stated that her daughter participates in the Lin Learning Center after school program currently located at 32 Harvard Street. Ms. Friedman stated that it is

challenging to find after school programming in Brookline. Ms. Friedman believed that the Learning Center provides an important and affordable service that assists students. Ms. Friedman also encouraged the Board to support a growing small business that is operated by a local resident. Ms. Friedman stated that her daughter enjoys the after school program and she believed this in-home temporary summer program to be a very low impact proposal.

Board Chairman Geller called for public comment in opposition to the Petitioner's proposal.

Aaron Williams of 29 School Street stated that he has a few concerns about the proposed in-home tutoring. Mr. Williams stated that the immediate neighborhood is a residential enclave within the M-1.0 zoning district that is bookended by busy commercial activity. Mr. Williams stated that many families live off of Harvard Place and vehicular access is narrow. Mr. Williams supported conditions that would limit the number of students and time period, particularly to maintain vehicular safety and the residential character of the neighborhood.

Board Chairman Geller clarified that the Petitioner is not seeking to change the zoning designation of the neighborhood or the 14 Harvard Place lot, but rather seeking a special permit to establish the in home tutoring use (Use #60 – Customary Home Occupation).

Mercedes Hawkins of 29 School Street stated that the Petitioner has engaged in property renovation over the last 4-5 months and never communicated her intention to request the in-home tutoring. Ms. Hawkins noted that the Learning Center website refers to the program as a full-time daycare as opposed to after school tutoring. Ms. Hawkins agreed that additional vehicular activity on Harvard Place presents a safety issue. For this reason, Ms. Hawkins supported a condition prohibiting pupil pick-up and drop-off on this private way.

Pablo Alvarez of 20 Harvard Place stated that he does not support a change in zoning and stated that the entire first floor unit at 14 Harvard Place would be used for the tutoring use.

Ellen Katz of 16 Harvard Place stated that she supported prior comments. Ms. Katz also submitted a letter signed by various neighborhood residents in opposition to the proposed in-home tutoring (Exhibit A).

Board Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board and the Building Department. Mr. Rosa stated that the Planning Board unanimously supported the proposed in-home tutoring. Board Members believed that the impact of this seasonal tutoring will be minimal and the use requires no exterior modification to the structure. Board members did agree that vehicular pick up/drop off should not occur on Harvard Place to limit activity on the narrow private way. Therefore, the Planning Board recommends approval of the first floor diagram submitted by Kay Park, dated 12/17/2015, and the site plan submitted by Antoni Szerszunowicz, dated 12/9/2015, subject to the following conditions:

1. Vehicular pick-up and drop-off shall not occur on Harvard Place.
2. Tutoring hours of operation shall be 9 am to 1 pm, Monday through Friday, for the months of June and July. The number of students shall be limited to six at one time.
3. The applicant shall return to the Planning Board for review within one year.

4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final first floor plan; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa further stated that the Building Department also has no objection to the relief as requested. Mr. Rosa stated that the Petitioner worked closely with both Building and Preservation staff to restore this two-family dwelling in a modest and historically appropriate manner. Mr. Rosa also reiterated that no zoning change is requested and the proposed in-home use requires special permit relief only. Mr. Rosa agreed that a sunset provision for in-home office uses is common and appropriate in this instance however this future review, if approved, should occur before the Zoning Board of Appeals rather than the Planning Board as recommended in Condition #3. Mr. Rosa concluded by stating that should the Board find that the standard for the grant of a special permit is satisfied, the Building Department will work with the Petitioner to ensure compliance with imposed conditions and building codes.

Board Deliberation

Board Member Zuroff stated that this proposal represents a limited use change. Mr. Zuroff noted that the in-home tutoring service would be a summer program rather than an after school program. As such, the pick-up and drop-off procedures are particularly relevant. Mr. Zuroff also clarified that any granted relief would permit in-home tutoring from June through July of 2016. Mr. Zuroff questioned what the Petitioner intends to do in August and as the school year resumes in September.

Ms. Lin stated that no tutoring will take place in August and she has a lease agreement with the Korean Church of Boston to resume after school tutoring at 23 Harvard Street from September 2016 through June 2017. Ms. Lin confirmed that she does not intend to request further in-home tutoring for the summer of 2017 at this time.

Mr. Zuroff stated that the proposal is limited in scope and believed that adequate controls are in place to limit time, vehicular activity, and the number of pupils but Mr. Zuroff expressed concern that this proposal was not communicated to abutting residents. Mr. Zuroff was also satisfied that any in-home tutoring use at 14 Harvard Place beyond July of 2016 requires that the Petitioner reapply for special permit relief and come before the Board for review. Mr. Zuroff agreed with the recommendation that vehicular pick-up/drop-off not occur on Harvard Place.

Board Chairman Geller questioned if the Petitioner owns the entire two-family structure and if so, does she intend to rent either of these units to a tenant when in-home tutoring is not in place. Ms. Lin confirmed that she does own both residential units located at 14 Harvard Place and she does not intend to rent either of these units to a tenant.

Mr. Geller believed that this proposed use of the two-family structure results in a relative “wash” in terms of net occupancy. Mr. Geller agreed that this proposal should have been communicated to abutting residents but believed that recommended conditions effectively cap the number of students, hours of operation, and the time period of the tutoring program. Mr. Geller also believed that the standards for the grant of a special permit, as outlined in Zoning By-Law Section 9.05, are appropriately satisfied. Mr. Geller stated that this section of the By-Law is intended to limit negative impacts. Mr. Geller characterized the limited in-home tutoring as a “soft use” that will not adversely impact the neighborhood, nor alter the zoning designation of the subject parcel.

Mr. Geller recommended that Condition #1 be modified to require notification to all parents preventing vehicular drop-off/pick-up on Harvard Place.

Board Member Book concurred with Mr. Zuroff and Mr. Geller's comments. Mr. Book clarified that any granted special permit relief would expire at the end of July 2016, requiring reapplication for special permit relief if the Petitioner wishes to provide in-home tutoring beyond this expiration date.

Unanimous Board grant of requested relief, subject to the following revised conditions:

- 1. Vehicular pick-up and drop-off shall not occur on Harvard Place. The Lin Learning Center shall provide notice of this restriction to all parents of pupils enrolled in the tutoring program.**
- 2. Tutoring hours of operation shall be 9 am to 1 pm, Monday through Friday, for the months of June and July. The number of students shall be limited to six at one time.**
- 3. The applicant shall return to the Zoning Board of appeals for review within one year if the Petitioner wishes to re-establish the in-home tutoring use beyond August 1, 2016.**
- 4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final first floor plan; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

21 Crowninshield Road – Application for a comprehensive permit to construct eight (8) residential units distributed between two four-story buildings with a total of 16 parking spaces.

Board Chairman Geller called case #2015-0057 and reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen located at 300 Washington Street, stated that he is requesting to continue the public hearing date for this comprehensive permit application (40B) to February 23, 2016 at 7:00pm. Attorney Allen stated that the proposed project has been reduced based on collaboration with the Town and abutting residents. Attorney Allen stated that the property owner, Robert Basile, passed away recently and the project team wishes to present before the Planning Board one final time prior to presenting this application to the Zoning Board of Appeals.

The Board had no additional questions.

Unanimous Board grant of case continuance to February 23, 2016

Unanimous approval of draft hearing minutes from January 28, 2016

Hearing Closed.